

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAECHOSPAN, INC.,  
Plaintiff,

v.

MEDALLIA, INC.,  
Defendant.

Case No. 22-cv-01732-NC

**ORDER STRIKING EXHIBIT LISTS  
AND ORDERING PLAINTIFF'S  
COUNSEL TO SHOW CAUSE FOR  
IMPOSING EXCESSIVE COSTS**

On April 21, 2023, the Court issued its Pretrial Preparation Order with instructions to the parties for preparing for the October 11 pretrial conference and October 23 trial in this case. ECF 179. Among other things, the parties were ordered to file a joint exhibit list with their joint trial readiness binder by September 27. The Court instructed "Prior to submitting the list, the parties must meet and confer and attempt to stipulate as to the admissibility of each exhibit." The parties did not comply. The exhibit lists were not filed jointly and it is evident that there was insufficient meet and confer before filing. Making matters much worse, EchoSpan identifies 1,098 trial exhibits. ECF 290. Medallia filed an amended exhibit list on October 5 that identifies 297 exhibits. The Court strikes both exhibit lists as grossly excessive and for failing to comply with the Pretrial Preparation Order.

EchoSpan's counsel is ordered to show cause on October 11 at 11:30 a.m. by Zoom

1 as to why they should not be found liable for excessive costs under 28 U.S.C. § 1927 for  
2 multiplying the proceedings “unreasonably and vexatiously.” The basis is the massive  
3 overbreadth of the exhibit list; the timing and incompleteness of their disclosure of the list  
4 to Medallia (9/25/2023 at 10:14 p.m. to Medallia, according to ECF 313 n.1, when it was  
5 due 9/27); and the asserted fact that EchoSpan’s counsel would not agree to jointly seek  
6 any extension and declined to confer on admissibility. ECF 313 n.1. The Court less than  
7 two months ago struck excessive briefing filed by EchoSpan’s counsel. ECF 266.

8 The Court has serious doubts about whether the parties and their counsel are  
9 prepared for a jury trial. Counsel will have an opportunity to explain on October 11.

10 **IT IS SO ORDERED.**

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12 Dated: October 10, 2023

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15 NATHANAEL M. COUSINS  
16 United States Magistrate Judge  
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